

bear the burden of proof that the unit is permanently retired.

(3) The owners and operators and, to the extent applicable, the CAIR designated representative of a unit exempt under paragraph (a) of this section shall comply with the requirements of the CAIR SO₂ Trading Program concerning all periods for which the exemption is not in effect, even if such requirements arise, or must be complied with, after the exemption takes effect.

(4) A unit exempt under paragraph (a) of this section and located at a source that is required, or but for this exemption would be required, to have a title V operating permit shall not resume operation unless the CAIR designated representative of the source submits a complete CAIR permit application under § 97.222 for the unit not less than 18 months (or such lesser time provided by the permitting authority) before the later of January 1, 2010 or the date on which the unit resumes operation.

(5) On the earlier of the following dates, a unit exempt under paragraph (a) of this section shall lose its exemption:

(i) The date on which the CAIR designated representative submits a CAIR permit application for the unit under paragraph (b)(4) of this section;

(ii) The date on which the CAIR designated representative is required under paragraph (b)(4) of this section to submit a CAIR permit application for the unit; or

(iii) The date on which the unit resumes operation, if the CAIR designated representative is not required to submit a CAIR permit application for the unit.

(6) For the purpose of applying monitoring, reporting, and recordkeeping requirements under subpart HHH of this part, a unit that loses its exemption under paragraph (a) of this section shall be treated as a unit that commences commercial operation on the first date on which the unit resumes operation.

§ 97.206 Standard requirements.

(a) *Permit requirements.* (1) The CAIR designated representative of each CAIR SO₂ source required to have a title V operating permit and each CAIR SO₂

unit required to have a title V operating permit at the source shall:

(i) Submit to the permitting authority a complete CAIR permit application under § 97.222 in accordance with the deadlines specified in § 97.221; and

(ii) Submit in a timely manner any supplemental information that the permitting authority determines is necessary in order to review a CAIR permit application and issue or deny a CAIR permit.

(2) The owners and operators of each CAIR SO₂ source required to have a title V operating permit and each CAIR SO₂ unit required to have a title V operating permit at the source shall have a CAIR permit issued by the permitting authority under subpart CCC of this part for the source and operate the source and the unit in compliance with such CAIR permit.

(3) Except as provided in subpart III of this part, the owners and operators of a CAIR SO₂ source that is not otherwise required to have a title V operating permit and each CAIR SO₂ unit that is not otherwise required to have a title V operating permit are not required to submit a CAIR permit application, and to have a CAIR permit, under subpart CCC of this part for such CAIR SO₂ source and such CAIR SO₂ unit.

(b) *Monitoring, reporting, and recordkeeping requirements.* (1) The owners and operators, and the CAIR designated representative, of each CAIR SO₂ source and each CAIR SO₂ unit at the source shall comply with the monitoring, reporting, and recordkeeping requirements of subpart HHH of this part.

(2) The emissions measurements recorded and reported in accordance with subpart HHH of this part shall be used to determine compliance by each CAIR SO₂ source with the CAIR SO₂ emissions limitation under paragraph (c) of this section.

(c) *Sulfur dioxide emission requirements.* (1) As of the allowance transfer deadline for a control period, the owners and operators of each CAIR SO₂ source and each CAIR SO₂ unit at the source shall hold, in the source's compliance account, a tonnage equivalent in CAIR SO₂ allowances available for compliance deductions for the control

period, as determined in accordance with § 97.254(a) and (b), not less than the tons of total sulfur dioxide emissions for the control period from all CAIR SO₂ units at the source, as determined in accordance with subpart HHH of this part.

(2) A CAIR SO₂ unit shall be subject to the requirements under paragraph (c)(1) of this section for the control period starting on the later of January 1, 2010 or the deadline for meeting the unit(s) monitor certification requirements under § 97.270(b)(1),(2), or (5) and for each control period thereafter.

(3) A CAIR SO₂ allowance shall not be deducted, for compliance with the requirements under paragraph (c)(1) of this section, for a control period in a calendar year before the year for which the CAIR SO₂ allowance was allocated.

(4) CAIR SO₂ allowances shall be held in, deducted from, or transferred into or among CAIR SO₂ Allowance Tracking System accounts in accordance with subparts FFF, GGG, and III of this part.

(5) A CAIR SO₂ allowance is a limited authorization to emit sulfur dioxide in accordance with the CAIR SO₂ Trading Program. No provision of the CAIR SO₂ Trading Program, the CAIR permit application, the CAIR permit, or an exemption under § 97.205 and no provision of law shall be construed to limit the authority of the United States to terminate or limit such authorization.

(6) A CAIR SO₂ allowance does not constitute a property right.

(7) Upon recordation by the Administrator under subpart FFF, GGG, or III of this part, every allocation, transfer, or deduction of a CAIR SO₂ allowance to or from a CAIR SO₂ source's compliance account is incorporated automatically in any CAIR permit of the source.

(d) *Excess emissions requirements.* If a CAIR SO₂ source emits sulfur dioxide during any control period in excess of the CAIR SO₂ emissions limitation, then:

(1) The owners and operators of the source and each CAIR SO₂ unit at the source shall surrender the CAIR SO₂ allowances required for deduction under § 97.254(d)(1) and pay any fine, penalty, or assessment or comply with any other remedy imposed, for the same

violations, under the Clean Air Act or applicable State law; and

(2) Each ton of such excess emissions and each day of such control period shall constitute a separate violation of this subpart, the Clean Air Act, and applicable State law.

(e) *Recordkeeping and reporting requirements.* (1) Unless otherwise provided, the owners and operators of the CAIR SO₂ source and each CAIR SO₂ unit at the source shall keep on site at the source each of the following documents for a period of 5 years from the date the document is created. This period may be extended for cause, at any time before the end of 5 years, in writing by the permitting authority or the Administrator.

(i) The certificate of representation under § 97.213 for the CAIR designated representative for the source and each CAIR SO₂ unit at the source and all documents that demonstrate the truth of the statements in the certificate of representation; provided that the certificate and documents shall be retained on site at the source beyond such 5-year period until such documents are superseded because of the submission of a new certificate of representation under § 97.213 changing the CAIR designated representative.

(ii) All emissions monitoring information, in accordance with subpart HHH of this part, provided that to the extent that subpart HHH of this part provides for a 3-year period for recordkeeping, the 3-year period shall apply.

(iii) Copies of all reports, compliance certifications, and other submissions and all records made or required under the CAIR SO₂ Trading Program.

(iv) Copies of all documents used to complete a CAIR permit application and any other submission under the CAIR SO₂ Trading Program or to demonstrate compliance with the requirements of the CAIR SO₂ Trading Program.

(2) The CAIR designated representative of a CAIR SO₂ source and each CAIR SO₂ unit at the source shall submit the reports required under the CAIR SO₂ Trading Program, including those under subpart HHH of this part.

(f) *Liability.* (1) Each CAIR SO₂ source and each CAIR SO₂ unit shall meet the

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requirements of the CAIR SO₂ Trading Program.

(2) Any provision of the CAIR SO₂ Trading Program that applies to a CAIR SO₂ source or the CAIR designated representative of a CAIR SO₂ source shall also apply to the owners and operators of such source and of the CAIR SO₂ units at the source.

(3) Any provision of the CAIR SO₂ Trading Program that applies to a CAIR SO₂ unit or the CAIR designated representative of a CAIR SO₂ unit shall also apply to the owners and operators of such unit.

(g) *Effect on other authorities.* No provision of the CAIR SO₂ Trading Program, a CAIR permit application, a CAIR permit, or an exemption under § 97.205 shall be construed as exempting or excluding the owners and operators, and the CAIR designated representative, of a CAIR SO₂ source or CAIR SO₂ unit from compliance with any other provision of the applicable, approved State implementation plan, a federally enforceable permit, or the Clean Air Act.

§ 97.207 Computation of time.

(a) Unless otherwise stated, any time period scheduled, under the CAIR SO₂ Trading Program, to begin on the occurrence of an act or event shall begin on the day the act or event occurs.

(b) Unless otherwise stated, any time period scheduled, under the CAIR SO₂ Trading Program, to begin before the occurrence of an act or event shall be computed so that the period ends the day before the act or event occurs.

(c) Unless otherwise stated, if the final day of any time period, under the CAIR SO₂ Trading Program, falls on a weekend or a State or Federal holiday, the time period shall be extended to the next business day.

§ 97.208 Appeal procedures.

The appeal procedures for decisions of the Administrator under the CAIR SO₂ Trading Program are set forth in part 78 of this chapter.

Subpart BBB—CAIR Designated Representative for CAIR SO₂ Sources

§ 97.210 Authorization and responsibilities of CAIR designated representative.

(a) Except as provided under § 97.211, each CAIR SO₂ source, including all CAIR SO₂ units at the source, shall have one and only one CAIR designated representative, with regard to all matters under the CAIR SO₂ Trading Program concerning the source or any CAIR SO₂ unit at the source.

(b) The CAIR designated representative of the CAIR SO₂ source shall be selected by an agreement binding on the owners and operators of the source and all CAIR SO₂ units at the source and shall act in accordance with the certification statement in § 97.213(a)(4)(iv).

(c) Upon receipt by the Administrator of a complete certificate of representation under § 97.213, the CAIR designated representative of the source shall represent and, by his or her representations, actions, inactions, or submissions, legally bind each owner and operator of the CAIR SO₂ source represented and each CAIR SO₂ unit at the source in all matters pertaining to the CAIR SO₂ Trading Program, notwithstanding any agreement between the CAIR designated representative and such owners and operators. The owners and operators shall be bound by any decision or order issued to the CAIR designated representative by the permitting authority, the Administrator, or a court regarding the source or unit.

(d) No CAIR permit will be issued, no emissions data reports will be accepted, and no CAIR SO₂ Allowance Tracking System account will be established for a CAIR SO₂ unit at a source, until the Administrator has received a complete certificate of representation under § 97.213 for a CAIR designated representative of the source and the CAIR SO₂ units at the source.

(e)(1) Each submission under the CAIR SO₂ Trading Program shall be submitted, signed, and certified by the CAIR designated representative for each CAIR SO₂ source on behalf of which the submission is made. Each such submission shall include the following certification statement by the